

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JESSICA SHERMAN,)	No. CV 08-1889-RC
)	
Plaintiff,)	
)	OPINION AND ORDER
v.)	
)	
MICHAEL J. ASTRUE,)	
Commissioner of Social Security,)	
)	
Defendant.)	
_____)	

Plaintiff Jessica Sherman filed a complaint on December 26, 2008, seeking review of the Commissioner's decision denying her application for disability benefits. On May 22, 2009, the Commissioner answered the complaint, and the parties filed a joint stipulation on August 26, 2009.

BACKGROUND

On October 28, 2005, plaintiff, who was born on September 14, 1986, applied for disability benefits under the Supplemental Security Income program ("SSI") of Title XVI of the Social Security Act ("Act"), claiming an inability to work since September 1, 1997, due to

1 bipolar disorder, depression and hypoglycemia. Certified
2 Administrative Record ("A.R.") 86-88, 105. The plaintiff's
3 application was initially denied on March 3, 2006, and was denied
4 again on October 6, 2006, following reconsideration. A.R. 48-52, 54-
5 61. The plaintiff then requested an administrative hearing, which was
6 held before Administrative Law Judge Jay E. Levine ("the ALJ") on
7 January 17, 2008. A.R. 16-45, 64-66. On May 19, 2008, the ALJ issued
8 a decision finding plaintiff is not disabled. A.R. 5-15. The
9 plaintiff appealed this decision to the Appeals Council, which denied
10 review on October 30, 2008. A.R. 1-4.

11 12 DISCUSSION

13 I

14 The Court, pursuant to 42 U.S.C. § 405(g), has the authority to
15 review the Commissioner's decision denying plaintiff disability
16 benefits to determine if his findings are supported by substantial
17 evidence and whether the Commissioner used the proper legal standards
18 in reaching his decision. Vasquez v. Astrue, 572 F.3d 586, 591 (9th
19 Cir. 2009); Vernoff v. Astrue, 568 F.3d 1102, 1105 (9th Cir. 2009).
20 "In determining whether the Commissioner's findings are supported by
21 substantial evidence, [this Court] must review the administrative
22 record as a whole, weighing both the evidence that supports and the
23 evidence that detracts from the Commissioner's conclusion." Reddick
24 v. Chater, 157 F.3d 715, 720 (9th Cir. 1998); Holohan v. Massanari,
25 246 F.3d 1195, 1201 (9th Cir. 2001). "Where the evidence can
26 reasonably support either affirming or reversing the decision, [this
27 Court] may not substitute [its] judgment for that of the
28 Commissioner." Parra v. Astrue, 481 F.3d 742, 746 (9th Cir. 2007),

1 cert. denied, 128 S. Ct. 1068 (2008); Vasquez, 572 F.3d at 591.

2
3 The claimant is "disabled" for the purpose of receiving benefits
4 under the Act if she is unable to engage in any substantial gainful
5 activity due to an impairment which has lasted, or is expected to
6 last, for a continuous period of at least twelve months. 42 U.S.C.
7 § 1382c(a)(3)(A); 20 C.F.R. § 416.905(a). "The claimant bears the
8 burden of establishing a prima facie case of disability." Roberts v.
9 Shalala, 66 F.3d 179, 182 (9th Cir. 1995), cert. denied, 517 U.S. 1122
10 (1996); Smolen v. Chater, 80 F.3d 1273, 1289 (9th Cir. 1996).

11
12 The Commissioner has promulgated regulations establishing a five-
13 step sequential evaluation process for the ALJ to follow in a
14 disability case. 20 C.F.R. § 416.920. In the **First Step**, the ALJ
15 must determine whether the claimant is currently engaged in
16 substantial gainful activity. 20 C.F.R. § 416.920(b). If not, in the
17 **Second Step**, the ALJ must determine whether the claimant has a severe
18 impairment or combination of impairments significantly limiting her
19 from performing basic work activities. 20 C.F.R. § 416.920(c). If
20 so, in the **Third Step**, the ALJ must determine whether the claimant has
21 an impairment or combination of impairments that meets or equals the
22 requirements of the Listing of Impairments ("Listing"), 20 C.F.R.
23 § 404, Subpart P, App. 1. 20 C.F.R. § 416.920(d). If not, in the
24 **Fourth Step**, the ALJ must determine whether the claimant has
25 sufficient residual functional capacity despite the impairment or
26 various limitations to perform her past work. 20 C.F.R. § 416.920(f).
27 If not, in **Step Five**, the burden shifts to the Commissioner to show
28 the claimant can perform other work that exists in significant numbers

1 in the national economy. 20 C.F.R. § 416.920(g). Moreover, where
2 there is evidence of a mental impairment that may prevent a claimant
3 from working, the Commissioner has supplemented the five-step
4 sequential evaluation process with additional regulations addressing
5 mental impairments.¹ Maier v. Comm'r of the Soc. Sec. Admin., 154
6 F.3d 913, 914-15 (9th Cir. 1998) (per curiam).

7
8 Applying the five-step sequential evaluation process, the ALJ
9 found plaintiff has not engaged in substantial gainful activity since
10 her application date. (Step One). The ALJ then found plaintiff has
11 the severe impairment of a bipolar disorder (Step Two); however, she
12 does not have an impairment or combination of impairments that meets
13 or equals a Listing. (Step Three). The ALJ next determined plaintiff
14 is unable to perform her past relevant work as a product demonstrator
15 or restaurant hostess. (Step Four). Finally, the ALJ determined
16 plaintiff can perform a significant number of jobs in the national

17
18 ¹ First, the ALJ must determine the presence or absence of
19 certain medical findings relevant to the ability to work. 20
20 C.F.R. § 416.920a(b)(1). Second, when the claimant establishes
21 these medical findings, the ALJ must rate the degree of
22 functional loss resulting from the impairment by considering four
23 areas of function: (a) activities of daily living; (b) social
24 functioning; (c) concentration, persistence, or pace; and (d)
25 episodes of decompensation. 20 C.F.R. § 416.920a(c)(2-4).
26 Third, after rating the degree of loss, the ALJ must determine
27 whether the claimant has a severe mental impairment. 20 C.F.R.
28 § 416.920a(d). Fourth, when a mental impairment is found to be
severe, the ALJ must determine if it meets or equals a Listing.
20 C.F.R. § 416.920a(d)(2). Finally, if a Listing is not met,
the ALJ must then perform a residual functional capacity assess-
ment, and the ALJ's decision "must incorporate the pertinent
findings and conclusions" regarding plaintiff's mental impair-
ment, including "a specific finding as to the degree of
limitation in each of the functional areas described in
[§ 416.920a(c)(3)]." 20 C.F.R. § 416.920a(d)(3), (e)(2).

1 economy; therefore, she is not disabled. (Step Five).

3 II

4 A claimant's residual functional capacity ("RFC") is what she can
5 still do despite her physical, mental, nonexertional, and other
6 limitations. Mayes v. Massanari, 276 F.3d 453, 460 (9th Cir. 2001);
7 see also Valentine v. Comm'r, Soc. Sec. Admin., 574 F.3d 685, 689 (9th
8 Cir. 2009) (RFC is "a summary of what the claimant is capable of doing
9 (for example, how much weight he can lift)."). Here, the ALJ found
10 plaintiff has the RFC to perform a full range of work at all
11 exertional levels except "she cannot work [at] unprotected heights
12 [or] work on dangerous machinery" and she "cannot have continuous
13 interaction with the public; nor perform conveyor, assembly line or
14 piece work, all of which constitute production quota jobs." A.R. 12.
15 However, plaintiff contends the ALJ's RFC assessment is not supported
16 by substantial evidence because the ALJ erroneously rejected the
17 opinions of treating psychiatrists, Mir Ali-Khan, M.D., and Michael
18 Galanis, M.D., and failed to properly consider the side effects of
19 plaintiff's medications.

21 A. Physicians' Opinions:

22 The medical opinions of treating physicians are entitled to
23 special weight because the treating physician "is employed to cure and
24 has a greater opportunity to know and observe the patient as an
25 individual." Sprague v. Bowen, 812 F.2d 1226, 1230 (9th Cir. 1987);
26 Morgan v. Comm'r of the Soc. Sec. Admin., 169 F.3d 595, 600 (9th Cir.
27 1999). Therefore, the ALJ must provide clear and convincing reasons
28 for rejecting the uncontroverted opinion of a treating physician, Ryan

1 v. Comm'r of Soc. Sec., 528 F.3d 1194, 1198 (9th Cir. 2008); Reddick,
 2 157 F.3d at 725, and "[e]ven if [a] treating doctor's opinion is
 3 contradicted by another doctor, the ALJ may not reject this opinion
 4 without providing 'specific and legitimate reasons' supported by
 5 substantial evidence in the record." Reddick, 157 F.3d at 725;
 6 Tommasetti v. Astrue, 533 F.3d 1035, 1041 (9th Cir. 2008).

7
 8 The plaintiff was hospitalized at Canyon Ridge Hospital as a
 9 danger to herself under California Welfare & Institutions Code § 5150
 10 from February 4 to February 6, 2003. A.R. 162-63. When admitted,
 11 plaintiff was diagnosed as having a bipolar disorder and depression,
 12 and her Global Assessment of Functioning ("GAF") was determined to be
 13 35.² A.R. 162. At the time of admission, plaintiff "stated that she
 14 was forced to take medication and, therefore, she got angry and wanted
 15 to kill herself. She also complained of having difficulty getting
 16 along with her mother who is known to be bipolar." Id. Dr. Khan
 17 noted that, during her brief hospital stay, plaintiff was stabilized
 18 with medication and supportive therapy; plaintiff's discharge
 19 diagnosis was recurrent major depression and her GAF upon discharge
 20 was determined to be 45.³ A.R. 162-63. Upon discharge, Dr. Khan

21
 22 ² A GAF of 31-40 indicates "[s]ome impairment in reality
 23 testing or communication (e.g., speech is at times illogical,
 24 obscure, or irrelevant) or major impairment in several areas,
 25 such as work or school, family relations, judgment, thinking, or
 26 mood (e.g., depressed man avoids friends, neglects family, and is
 27 unable to work; child frequently beats up younger children, is
 28 defiant at home, and is failing at school). American Psychiatric
 Ass'n, Diagnostic and Statistical Manual of Mental Disorders
 ("DSM-IV-TR"), 34 (4th ed. (Text Revision) 2000).

³ A GAF of 41-50 indicates "[s]erious symptoms (e.g.,
 suicidal ideation, severe obsessional rituals, frequent

1 found plaintiff was stable, cooperative and coherent, and had an
2 appropriate affect and no thoughts of suicide or homicide. A.R. 163.
3 Dr. Khan recommended plaintiff receive outpatient therapy. Id.
4

5 On February 24, 2003, Dr. Galanis examined plaintiff at the
6 Riverside County Department of Mental Health ("DMH"), and diagnosed
7 her as having a bipolar disorder and determined her GAF was 50
8 (highest past year 40). A.R. 186-88. Dr. Galanis noted plaintiff was
9 experiencing social and emotional problems at home and school, but had
10 no suicidal or homicidal ideation or intent. Id. Plaintiff continued
11 to receive treatment at DMH and, on March 8, 2004, A.R. 176-85, Dr.
12 Galanis found: plaintiff's thoughts were goal-directed and clear; her
13 mood was euthymic; her medication was effective in reducing her
14 agitation, impulsivity, outbursts of rage, depressed moods and
15 irritability; she was not suicidal, homicidal or gravely disabled; she
16 was starting to complete some school projects; and she had started a
17 new part-time job. A.R. 184. On April 19, 2004, Dr. Galanis again
18 examined plaintiff, and found her medication was effective in
19 decreasing her rage, impulsivity and mood swings, her thoughts were
20 goal-directed and clear, her affect was more pleasant and her behavior
21 more cooperative, and she had increased efforts and attention to
22 school work and experienced much less anger and irritability. A.R.
23 183. On August 14, 2004, Dr. Galanis stated plaintiff had been more
24 irritable and argumentative in the preceding two weeks, and her sleep
25 had not been as restful; however, plaintiff was not suicidal,

26 _____
27 shoplifting) or any serious impairment in social, occupational,
28 or school functioning (e.g. no friends, unable to keep a job)."
DSM-IV-TR at 34.

1 homicidal or gravely disabled, and she denied adverse reactions to
2 medication. A.R. 182. On September 23, 2004, Dr. Galanis again noted
3 plaintiff was not suicidal, homicidal, or gravely disabled, and he
4 found plaintiff had no adverse reactions to her medication other than
5 some mild dulling on Trileptal. A.R. 181. Finally, on January 25,
6 2005, Dr. Galanis reported that plaintiff had stopped taking
7 medication on a regular basis due to nausea and headaches, and she had
8 less ups and downs since she has been off her medication. A.R. 179.
9 Dr. Galanis stated plaintiff is less anxious and picks at her skin
10 less, she feels calmer and less irritable, and her ability to
11 concentrate is improved with Desipramine. Id. Indeed, plaintiff
12 stated Luvox and Desipramine help her mood and attention span, and she
13 is better able to pay attention, organize, and clean her room, while
14 Dr. Galanis found plaintiff's mood was no longer anxious, depressed,
15 suicidal, or homicidal, her anxiety attacks had ceased, she was
16 working at a restaurant, and she was clear about her future. Id.
17 Plaintiff also denied side effects from the Luvox or Desipramine. Id.
18

19 The plaintiff contends the ALJ's RFC assessment is not supported
20 by substantial evidence because the ALJ did not properly consider the
21 opinions of Drs. Khan and Galanis. Jt. Stip. at 3:4-4:18, 7:11-9:4,
22 9:13-19. The Court disagrees. The ALJ specifically discussed the
23 medical records from Canyon Ridge Hospital, where plaintiff was seen
24 by Dr. Khan, noting that when plaintiff was discharged, "[h]er
25 condition was stable and she was sent home with recommendations for
26 outpatient therapy along with five prescriptions." A.R. 13. The ALJ
27 also considered the DMH records, where plaintiff was seen by Dr.
28 Galanis, finding that "changes to [plaintiff's] medication regime were

1 made as needed for treatment of depression and bipolar disorder[,]”
2 and plaintiff made “progressive improvement on medication when she
3 [was] compliant.” Id. Moreover, plaintiff does not cite any
4 limitation posited by either Dr. Khan or Dr. Galanis that contradicts
5 the RFC assessment. Rather, plaintiff complains that the ALJ erred
6 because he did not specifically discuss the GAF scores Drs. Khan and
7 Galanis posited. Not so. The ALJ’s failure to mention a GAF score
8 does not render the RFC assessment deficient. See Howard v. Comm’r of
9 Soc. Sec., 276 F.3d 235, 241 (6th Cir. 2002) (“While a GAF score may
10 be of considerable help to the ALJ in formulating the RFC, it is not
11 essential to the RFC’s accuracy. Thus, the ALJ’s failure to reference
12 the GAF score in the RFC, standing alone, does not make the RFC
13 inaccurate.”); Petree v. Astrue, 260 Fed. Appx. 33, 42 (10th Cir.
14 2007) (Unpublished Disposition) (“[A] low GAF score does not alone
15 determine disability, but is instead a piece of evidence to be
16 considered with the rest of the record.”); Ramos v. Barnhart, 513
17 F. Supp. 2d 249, 261 (E.D. Pa. 2003) (“Clinicians use a GAF scale to
18 identify an individuals’ [sic] overall level of functioning, and a
19 lower score ‘may indicate problems that do not necessarily relate to
20 the ability to hold a job.’” (citation omitted)); 65 Fed. Reg. 50746,
21 50764-65 (“The GAF scale . . . does not have a direct correlation to
22 the severity requirements in our mental disorder listings.”).
23 Further, the GAF scores were determined more than two years before
24 plaintiff applied for SSI benefits, see Torres v. Chater, 125 F.3d
25 166, 171 n.1 (3d Cir. 1997) (“SSI benefits are not payable for a
26 period prior to a claimant’s application.” (citing 20 C.F.R. §
27 416.335)), and, as the ALJ found, plaintiff’s condition clearly
28 improved with treatment. A.R. 13; see also A.R. 166-67, 179-85.

1 Finally, the RFC assessment is supported by substantial evidence in
2 the record, including the opinions of examining psychiatrist Kent
3 Jordan, M.D. (A.R. 189-94), and examining psychologist, Robin Rhodes
4 Campbell, Ph.D. (A.R. 214-19). Orn v. Astrue, 495 F.3d 625, 632 (9th
5 Cir. 2007); Tonapetyan v. Halter, 242 F.3d 1144, 1149 (9th Cir. 2001).

6
7 **B. Side Effects:**

8 In determining a claimant's limitations, the ALJ must consider
9 all factors that might have a significant impact on an individual's
10 ability to work, including the side effects of medication. Erickson
11 v. Shalala, 9 F.3d 813, 817-18 (9th Cir. 1993); Varney v. Sec'y of
12 Health & Human Servs., 846 F.2d 581, 585 (9th Cir. 1988). Thus, when
13 a claimant states she experiences a side effect known to be associated
14 with a particular medication, the ALJ may disregard that evidence only
15 if he "support[s] that decision with specific findings similar to
16 those required for excess pain testimony, as long as the side effects
17 are in fact associated with the claimant's medication(s)." Varney,
18 846 F.2d at 585.

19
20 The plaintiff contends the ALJ did not properly consider the side
21 effects from her medication, specifically "mild dulling" from
22 Trileptal and nausea and headaches. A.R. 179, 181. However,
23 plaintiff discontinued the medications causing those side effects
24 before she applied for disability benefits. A.R. 167. Instead,
25 during the relevant time period, plaintiff was prescribed Cymbalta,
26 A.R. 22, 167, 191, which she did "pretty well" on (but had to stop
27 taking because she did not have insurance). A.R. 23-25. Therefore,

28 //

1 the ALJ did not err in addressing the plaintiff's side effects from
2 medication. Greger v. Barnhart, 464 F.3d 968, 973 (9th Cir. 2006).

3
4 **ORDER**

5 IT IS ORDERED that: (1) plaintiff's request for relief is denied;
6 and (2) the Commissioner's decision is affirmed, and Judgment shall be
7 entered in favor of defendant.

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9 DATE: February 8, 2010

/S/ ROSALYN M. CHAPMAN
ROSALYN M. CHAPMAN
UNITED STATES MAGISTRATE JUDGE

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